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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: ST. PAUL, MN Date: JAN 21 2004

IN RE: [redacted]

PETITION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, St. Paul, Minnesota. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a Citizenship and Immigration Services (CIS) Motion to Reopen. The motion will be granted and the previous decisions of the District Director and the AAO will be affirmed.

The applicant is a native and citizen of Nigeria who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation in June 1999. The applicant married a native of Nigeria and naturalized U.S. citizen in Minneapolis on May 7, 2000. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks the above waiver of inadmissibility in order to remain in the United States with her U.S. citizen husband and child.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly.

On appeal, counsel stated that the Immigration and Naturalization Service [now CIS] failed to identify which factors it considered, gave too much weight to the one negative factor, namely the use of the passport of another to enter the United States, and gave too little weight to the favorable factor, namely the approved Form I-130 or to the extent of the petitioner's ties to Nigeria and the financial impact of departure from the United States.

Counsel requested 90 days in which to submit a Freedom of Information Act (FOIA) request and file additional documents. A memo in the record indicates that the record was held at the office in St. Paul until August 2002, five months after the appeal was filed, in anticipation of the FOIA request. When no request was filed, the record was forwarded to the AAO. The AAO dismissed the appeal on February 14, 2003. Subsequently, the AAO received a CIS Motion to Reopen the appeal from the District Director, St. Paul, Minnesota. The district director indicated that on June 10, 2002, CIS timely received the applicant's appeal brief and additional evidence from counsel. The office in St. Paul failed to send the brief and attachments to the AAO when the appeal was forwarded.

On motion to reopen, the district director forwards counsel's brief as well as an affidavit of the applicant's spouse; a copy of a referral request relating to diabetes suffered by the applicant's spouse; primary care clinic notes for the applicant's spouse; a copy of the employee benefits election form completed by the applicant; a copy of the health benefits card belonging to the applicant; copies of U.S. Department of State country reports and consular information sheets for Nigeria; a copy of the 2001 income tax return statement for the couple and verification of the applicant's employment.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that the applicant procured admission into the United States under the Visa Waiver Pilot Program on June 11, 1999, by presenting a passport belonging to another person and using that individual's identity as a citizen of the United Kingdom.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's husband. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the BIA deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Counsel contends that the applicant's spouse would suffer extreme hardship as a result of departing from the United States. The applicant's spouse has lived in the United States since May 1987; he visited Nigeria once since relocating to the United States and "could not take it." *See* Affidavit of Olakunle Ogundeji, dated June 7, 2002. The applicant's spouse has a career in the United States as a cab driver and would be unable to secure comparable employment in Nigeria. The applicant's spouse also suffers from diabetes, high cholesterol, heartburn and allergies and therefore is "sure to die" if forced to return to Nigeria where he would be unable to afford the requisite medications. *Id.* Counsel includes several reports on Nigeria presumably to support the assertions of the applicant's spouse regarding conditions in his native country.

On the other hand, counsel does not establish extreme hardship to the applicant's husband if he remains in the United States thereby maintaining his productive career and access to adequate medical care. The AAO notes that as U.S. citizens, the applicant's spouse and child are not required to leave the United States as a result of the adjudication of the applicant's waiver.

The AAO recognizes that the applicant's husband will endure hardship as a result of separation from his wife. However, his situation, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship. The record does not establish that the applicant is the only person who can provide care to the couple's child. The applicant's husband states that if his son remains in the United States and the applicant returns to Nigeria, "I would need to put my son in daycare which is not what I would want for him." *Id.* The need to place a child, who is not a qualifying

relative under section 212(i), with a care provider other than his mother does not rise to the level of extreme hardship under the circumstances presented in this application. Further, the AAO notes that the applicant's child is not a qualifying relative for purposes of waiver proceedings under section 212(i) of the Act.

Counsel further contends that separation of the family would pose a financial strain on the applicant's spouse. The applicant's spouse states, "It could be difficult to support two households." *See* Affidavit of Olakunle Ogundeji, dated June 7, 2002. The U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The record does not establish that the applicant will be unable to financially assist in her own welfare while residing in Nigeria.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the motion to reopen is granted, however, the previous decisions of the district director and the AAO will not be disturbed.

ORDER: The motion is granted and the previous decisions of the district director and the AAO will be affirmed.